

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MAUI JIM, INC., an Illinois Corporation)	
	)	Case No. 1:16-cv-09788
Plaintiff,)	
	)	District Judge Aspen
v.	)	Magistrate Judge Gilbert
)	
SMARTBUY GURU ENTERPRISES, a	)	DEFENDANTS' MOTION FOR
Cayman Island Company, MOTION	)	RECONSIDERATION OF ECF 358 WITH
GLOBAL LTD., a Hong Kong Company,	)	RESPECT TO COUNTS II, IV, V, AND VI OF
SMARTBUYGLASSES SOCIETÀ A	)	DEFENDANTS' COUNTERCLAIM OR, IN
RESPONSABILITÀ LIMITATA, an	)	THE ALTERNATIVE, FOR DISMISSAL OF
Italian Company, SMARTBUYGLASSES	)	PLAINTIFF'S TORTIOUS
OPTICAL LIMITED, a Hong Kong	)	INTERFERENCE CLAIM
company,)	
)	
Defendants.)	

Defendants SmartBuy Guru Enterprises, Motion Global Ltd., SmartBuyGlasses Società a Responsabilità Limitata, and SmartBuyGlasses Optical Limited (collectively “SmartBuyGlasses”) respectfully request under Fed. R. Civ. P. 59(e) that this Court reconsider its Memorandum, Opinion, and Order (ECF No. 358) with respect to Counts II, IV, V, and VI of SmartBuyGlasses’ counterclaim. SmartBuyGlasses further moves, in the alternative, to dismiss Plaintiff’s tortious interference claim (Count VI of the Second Amended Complaint) on the grounds of *forum non conveniens* and international comity should this Court maintain its dismissal of Count IV of the counterclaim. In support of its motion, SmartBuyGlasses states as follows:

1. SmartBuyGlasses respectfully submits that this Court committed the following manifest errors of law when it dismissed Counts IV, V, VI and part of Count II of SmartBuyGlasses’ counterclaim, as more fully explained in the accompanying memorandum:

a. this Court improperly dismissed SmartBuyGlasses’ defamation claim

related to the press release because the Court failed to properly apply the republication rule and erroneously believed republishing the allegations from the complaint was immunized by the litigation privilege or fair report privilege. The innocent construction rule does not protect Maui Jim's defamatory statements contained in its press release because Maui Jim has no privilege to repeat its defamatory allegations outside of the litigation.

- b. this Court applied an incorrect *forum non conveniens* standard to dismiss SmartBuyGlasses' claim under the Treaty on the Functioning of the European Union ("TFEU") and misconstrued the principle of international comity by overlooking – among other things – that Maui Jim chose this forum and that the same issues will necessarily be litigated in connection with Maui Jim's tortious inference claim; and
- c. this Court (i) misapprehended SmartBuyGlasses' Cartwright Act claim because SmartBuyGlasses pled injury from Maui Jim's termination of those suppliers who violate the pricing policy to sell to SmartBuyGlasses and (ii) failed to properly interpret the Ninth Circuit's holding in *Knevelbaard Dairies v. Kraft Foods, Inc.* 232 F.3d 979, 988 (9th Cir. 2000), with respect to antitrust standing and injury.

2. Moreover, should this Court maintain its dismissal of SmartBuyGlasses' TFEU claim, SmartBuyGlasses moves – in the alternative – to dismiss Count VI of Maui Jim's Second Amended Complaint (tortious interference) because it relies on a determination of the same law and facts upon which the Court based its dismissal of the TFEU claim.

WHEREFORE, for the reasons set forth herein and in SmartBuyGlasses' memorandum

in support of this motion, SmartBuyGlasses respectfully requests that this Court reconsider under Fed. R. Civ. P. 59(e) its dismissal of Counts IV (Cartwright Act), V (California UCL), and VI (TFEU) of SmartBuyGlasses' counterclaim and the dismissal in part of Count II (defamation relating to the press release) of the counterclaim. SmartBuyGlasses requests, in the alternative, that this Court dismiss Count VI of Maui Jim's Second Amended Complaint should the Court maintain its dismissal of SmartBuyGlasses' TFEU claim.

Dated: June 2, 2019

Respectfully submitted,

SMARTBUY GURU ENTERPRISES, MOTION
GLOBAL LTD., SMARTBUYGLASSES
SOCIETÀ A RESPONSABILITÀ LIMITATA,
SMARTBUYGLASSES OPTICAL LIMITED

By: /s/ Stephen J. Rosenfeld
One of their attorneys

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CERTIFICATE OF SERVICE

This is to certify that on June 2, 2019, Stephen J. Rosenfeld, an attorney, caused to be served a true and correct copy of the foregoing document via electronic mail on all counsel of record who have consented to electronic service.

/s/ Stephen J. Rosenfeld